

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-170539

DATE: July 30, 1975

MATTER OF: Mr. Lorenzo Moffett-Lease Termination

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**DIGEST:**

1. GAO has no authority to render decision on request in nature of declaratory judgment concerning termination of lease and right to evict lessee thereunder. Resolution of issue should be made by court with appropriate jurisdiction.
2. Claim for interest on monies previously owed, but paid, under proposed unexecuted lease is not authorized, since, unlike here, interest can only be paid when stipulated for in contracts, or specifically directed by statute.

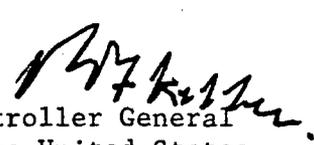
By decision B-170539, July 15, 1971, our Office determined that the claim of Mr. Lorenzo Moffett for modification of proposed unexecuted lease No. GS-09B-6150 for the rental of a building in Nevada City, California, under solicitation for negotiated offers to lease No. 9-68-R-22, issued by the Public Buildings Service, General Services Administration (GSA), San Francisco, California, was meritorious. Therefore, we recommended that the proposed unexecuted lease be amended from the date of occupation by the Forest Service with regard to the addition to the existing building to reflect the "net usable space" as defined by Schedule D and as set out in the final construction drawings made a part of the contract and actually used in construction.

By letter dated October 27, 1972, counsel for Mr. Moffett requested that our Office interpret the above decision. This request was based on the contention that GSA had misconstrued the manner in which the lease was to be modified. However, by letter dated December 5, 1973, counsel withdrew this request as GSA had tendered a proposed lease prepared in accordance with our decision. Nevertheless, counsel contended certain specification requirements in the tendered lease were not in conformance with the actual usable space of the leased premises and sought to rectify the remaining differences with GSA.

Subsequently, by letter dated June 26, 1974, counsel for Mr. Moffett requested that our Office declare the still proposed and unexecuted lease terminated as a result of numerous specified GSA actions constituting an alleged breach of the lease. Although a documented report responsive to the June 26 letter was requested from GSA on September 9, 1974, by our Office, GSA did not respond until April 28, 1975. According to the report, efforts to settle the matter took place during the interim to no avail. Counsel's comments on the agency report were received by our Office on June 2, 1975. The record now discloses that GSA has paid Mr. Moffett all back and increased rental outstanding under the proposed unexecuted lease in accordance with our July 15, 1971, decision. However, upon further advice of July 3, 1975, from counsel for Mr. Moffett, a decision, somewhat akin to a declaratory judgment, is still being sought finding GSA in breach of the proposed unexecuted lease, and therefore, subject to eviction.

Our Office is without statutory authority to consider a request for "declaratory judgment" concerning a possibly terminated agreement and the right to evict the lessee thereunder. Therefore, we must decline to render a decision on this issue as resolution should be made by a court with appropriate jurisdiction.

Additionally, Mr. Moffett has claimed interest on monies previously owed, but now paid, under the proposed unexecuted lease. However, the rule is well established that the payment of interest by the Government on its unpaid accounts or claims may not be made except when interest is stipulated for in legal and proper contracts or when the allowance of interest is specifically directed by statute. Lance-Air, Inc., B-174899, July 24, 1974; B-169876, August 11, 1970. Accordingly, such payment cannot be authorized.

  
Deputy Comptroller General  
of the United States